

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.245/Ind/2024
(Assessment Year: 2017-18)

Mahendra Singh Chawla 4/35 Gram Pigdamber A.B. Road Near Rao Indore (Appellant / Assessee)	Vs.	DCIT circle -1(1) Indore (Respondent/ Revenue)
PAN: AAZPC0120C		
Assessee by	None	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	02.09.2024	
Date of Pronouncement	04 .09.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 08.01.2024 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2017-18.

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that on the earlier date of hearing that 1st August 2024 the assessee requested for adjournment of hearing and accordingly the hearing of the

matter was adjourned for today at the request of the assessee vide letter dated 29th July 2024. Despite the fact that the hearing of the case was adjourned for today at the request of the assessee none has appeared on behalf of the assessee when this appeal was called for hearing at 10:30AM and then at 1:30PM. Accordingly the Bench proposes to hearing and disposes off this appeal ex-parte. The assessee has raised following grounds of appeal:

- “1. That Ld. CIT(A) has erred in confirming the action of Ld. A.O. for denying the exemption claimed by the appellant u/s 54 of Rs. 13985500 being investment in new house while completing the assessment under section 143(3) on the ground that new house purchased by the assessee is not registered in his name ignoring all the explanations and documents submitted before A.O.as well as before Ld. CIT(A) Ground.*
- 2. That Ld. CIT(A) has erred in treating the Indexed cost of purchase of property of Rs. 781853 and indexed cost of improvement of property at Rs. 204707 total Rs. 986560 as cost of improvement and accordingly allowed the ground of the appellant considering the total as improvement cost instead of segregating indexed cost of purchase and improvement separately.”*
3. The assessee is an individual and filed his return of income on 27.12.2017 declaring total income of Rs.98,19,050/-. During the course of scrutiny assessment the AO noted that the assessee has claimed deduction u/s 54 of the Act to the tune of Rs.1,39,85,500/- for purchase of two flats. The AO noted that the flats have not been allotted in the name of the assessee and consequently the claim of deduction u/s 54 was denied. Apart from the claim of deduction u/s 54 the assessee also claimed deduction on account of cost of

improvement to the tune of Rs.9,86,560/- the AO doubted the claim of the assessee on the ground that the assessee has produced a bill without giving full address, mobile number of the vendor. Further the entire payment was made in cash. Thus, the AO held that the assessee has failed to establish the identity and genuineness of the transactions. The assessee challenged the action of the AO before the CIT(A) who has allowed the claim of deduction of the assessee on account of improvement cost but the claim of deduction u/s 54 of the Act was rejected and thereby the order of the AO was confirmed to that extent. Since none has appeared on behalf of the assessee therefore, we heard the argument of the Ld. DR however, the submissions of assessee made before the CIT(A) are reproduced in para 4 of the impugned order as under:

"The appellant is in receipt of above Notice online requiring him to make the compliance online on or before 07.12.2023. Appellant in continues with his earlier compliance dated 21.10.2021 begs to submit as under:

1. That the appellant had filed his return of income declaring income of Rs 9819050 after claiming exemption u/s 54 of the Act for Rs. 13985500 on 27.12.2017 u/s 139(1) of the Act. During the year under consideration the appellant sold a residential house for a sum of Rs. 18750000 and in turn has invested a sum of Rs. 13985500 for purchasing new residential house and paid the entire amount through Banking Chanel. As such had claimed exemption from payment of capital gain tax of a sum of Rs. 13985500. Thereafter the case of the appellant was selected for limited scrutiny through CASS to examine the claim of the appellant.

2. The assessment was commenced by issue of Notice u/s 143(2) dated 10.08.2018 by ACIT-4(1) Indore. Thereafter no

proceedings were carried out by the Department for a period of more than one year. Later, the case was transferred to the office of DCIT-1(1) on 20.08.2019, who by issuing Notice u/s 142(1) dated 08.11.2019 has recommenced the assessment proceedings and was concluded on 05.12.2019. 3. During assessment proceedings Ld. A.O. observed that the appellant has claimed exemption u/s 54 of the Act on the ground that he has purchased new residential house for Rs. 13985500 as such has required the assessee to justify the said claim. In response to which the appellant submitted following documents in support of his claim. (i) Copy of Allotment letter issued by M/s Blue Diamond Construction, Indore and (ii) Copies of Bank Statement in support of the payments as stated to have been paid by the appellant in the allotment letter. (iii) Possession letter issued by the Builder for handing over the possession of property under consideration to the appellant.

On specific query raised by Ld. A.O. in connection with the Registration of the property in favor of the appellant, it was submitted that though the possession of the property has been received to him but registration of the same was pending.

The Ld. Ld. A.O. instead of relying on the above documents has doubted the transaction merely on the ground that no registration of the property was completed as per the requirements of the provisions of Transfer of immovable properties Act.

Ld. A.O. observed that allotment letter as submitted before him was a piece of paper only which has been cooked by the appellant. While drawing above observations Ld. A.O. failed to appreciate the following fact of the case and concealing the same from the body of assessment order.

1. The appellant made the entire payment of purchase consideration through Banking channel for which necessary evidence were submitted before him during assessment proceedings. Due to which there is no force in the allegation made by Ld. A.O. that appellant had cooked the documents in order to claim the benefit of the exemption as claimed by him.

But Ld. A.O. failed to appreciate the fact that all the payments were made through Banking channel and have been duly recorded in Bank's record which could not be cooked and before bringing any supporting document on record that documents submitted before him by appellant were cooked one. In absence of which there is no force in the allegation of Ld. A.O. and deserves to be ignored.

2. Ld. A.O. deputed his Inspector to spot for verification of property claimed to have been purchased. Inspector has submitted his report that the flat claimed to have been purchased by the appellant were exist and, on his enquiry, he found that the owner of flat was the appellant. Inspector also submitted that property under consideration consist of two units of flat which are adjoining to each other.

The above two crucial facts of the case which proves the intention of the appellant that he had actually owned the property under consideration and the act of the appellant clearly proves that the documents as submitted before him were not cooked one as alleged by Ld. A.O. without any evidence in his possession for the same and carrying out any investigation, except doubting the intention of the appellant and ignoring that he is disclosing extra ordinary income which very few assessee declares the said income, as such Ld. A.O. would not have doubted about the integrity of the appellant.

2. Ld. A.O. opined that in absence of payment of any Stamp Duty being paid by the appellant the property under consideration is not transferred in his favor as such in his opinion the appellant cannot be treated as owner of the property under consideration as such no exemption as claimed by the appellant u/s 54 of the Act could be allowed and accordingly he denied the exemption u/s 54 as claimed by the appellant in the return of income for a sum of Rs. 13985500. Ld. A.O. further observed that allotment letter as submitted by the appellant is merely a piece of paper which can be cancelled at any time and the amount can be reversed at any time. The Ld. A.O. merely on the presumption that unregistered document can at any time be cancelled has ignored the important

provisions of Income Tax Act, that as per the provisions of I.T. Act registration of the property is not an essential condition, therefore, as per provisions of I.T. Act if the following conditions are fulfilled then the immovable property is treated as transferred irrespective of the facts whether the same is registered under the provisions of Transfer of Immovable properties Act. As such I.T. Act does not recognize the Registration of Property for considering the transfer.

- (i) There should be an agreement between the party for purchase and sale of the property.*
- (ii) There should be Part performance of the sale as agreed consideration for sale of property, and*
- (iii) Possession of the property should have been passed to the buyer from the seller.*

The appellant in response to show cause Notice dated 30.11.2019 issued by the Ld. A.O. has submitted the detailed reply in connection with the proposal of Ld. A.O. The copy of the said submission is being submitted for ready reference. But the explanation offered by the appellant was summerly not accepted without giving any speaking comments upon the explanation offered by the appellant with the following observations in the assessment order which reads as under: "In view of the above vide questionnaire dated 30.11.2019 the assessee has been show caused why the deduction claimed should not be added back to the total income of the assessee. In response to the same assessee has furnished the reply which is considered but not found acceptable due to the reason that assessee has failed to furnish the registered sale deed of the property"

Thus, above observations of Ld. A.O. clearly proves that he had no reason which proves that appellant was disqualified to claim the deduction while computing the long-term capital gain chargeable to tax except the findings of Ld. A.O. that in absence of registered sale deed of the property for which the appellant is claiming the benefits as provided u/s 54 of the Act. The copy of

reply submitted by the appellant in response to show cause Notice dated 30.11.2019 is being submitted for your honor's kind perusal and consideration.

Now the appellant submits before your honor the legal aspect of the case as under:

(i) As per the provisions of section 2(47)(v) of the Act, under the following conditions any asset will be deemed to be transferred irrespective of the fact that the registration of such transfer is pending as required under the Transfer of Properties Act, 1882.

The provisions of Section 2(47) (v) of the Act reproduced for your kind perusal and consideration.

(47) "Transfer", in relation to a capital asset, includes (i) The sale, exchange, or relinquishment of the asset; or (ii) The extinguishment of any rights therein; or (iii) The compulsory acquisition thereof under any law; or (iv) In a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in trade of a business carried on by him, such conversion or treatment; [or] (via) the maturity or redemption of a zero-coupon bond; [or] (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company, or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1-for the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2- For the removal of doubts, it is hereby clarified that. "transfer" includes and shall be deemed to have always

included disposing of or parting with an asset or any interest therein, or treating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

Thus, as per the above provisions of the Act if the following three conditions have been fulfilled then under the I.T. Act, the property shall be deemed to have been transferred and chargeable capital gain tax on such transaction will be levied as per the provisions of section 45 of the Act. (i) There is an agreement to sale for purchase/sale of the property between the buyer and seller (ii) Part consideration has been passed to seller from the buyer (iii) Possession of the property under consideration has been passed out to the buyer.

As such as per the provisions of Income Tax Act, if the above conditions are satisfied then the property under consideration shall be deemed to have been transferred irrespective of the fact that such asset has been transferred in the name of the buyer as per the Provisions of section 53A of Transfer of Property Act, 1882.

Even, as per the provisions of section 53A of transfer of Property Act, 1882 which envisage as under:

The provisions of Section 53 A, envisages situations where under a contract for transfer of immovable property, the purchaser has paid the price and has taken possession of the property even though the transfer deed or conveyance has not been registered. In such cases the transferor is debarred from agitating his title to the property against the purchaser

Let us analyze provisions of section 53A of the Transfer of Property Act, 1882.

53A. Part performance. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or the part performance thereof.

Following conditions should be complied under Section 53A.

- 1. There should be a contract for consideration in writing and same should be signed by the transferor.*
- 2. The contract should be for transfer of immovable property and from therein the term necessary to constitute transfer should be certainly ascertained.*
- 3. The transferee should have taken possession of the property and has done something for furtherance of the contract.*
- 4. The transferee should be ready and willing to perform his part of the contract; and*

5. In this case even without execution of sale deed, the transferee acquires the right in the property and the transferor cannot claim any right in respect of property under consideration other than the rights expressly provided in the terms of contract.

Section 2(47)(v) of the Income Tax Act, 1961; covers within its scope any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882.

All transactions in which possession of immovable property is handed over would not cover under provisions of section 2(47)(v). Only those transactions which complies provisions of section 53A, are considered as transfer under 2(47)(v). The main ingredient is the intention of transfer of property in the contract for the consideration. Handing over possession of the property by the transferor to the transferee in part performance of the contract under section 53A of the Transfer of Property Act, 1882 is necessary, but transfer should be of legal titles and rights to enjoy the property. The essence of handing over the possession as contemplated in section 53A of Transfer of Property Act, 1882 lies not merely in handing over possession but lies in the intention of the transferor to transfer the ownership rights of the property for consideration in favor of transferee.

Thus, from the above provisions of both Acts i.e., Income Tax Act and Transfer of immovable Properties the transaction of the appellant is complied with the position of "Transfer" and accordingly appellant has become the owner of the property purchased by him though not registered in his name and no stamp duty has been paid by him. But, Ld. A.O. without any basis has opined that in absence of registered deed in the name of the appellant he has not become the owner of the house purchased by him and accordingly he is not qualified for claiming deduction of investment while computing the capital gain chargeable to tax. Hence, without bringing any supporting views about his belief and doubting the genuineness of the transaction even ignoring the fact that entire transactions have

been done through Banking channel which proves the real time transaction but Ld. A.O. termed the same as cooked transactions and denied the deduction as claimed by the appellant. Further the appellant wishes to rely on the following case laws on the subject.

Dwarka Das Kapadiav. CIT [2003]/180 CTR (Bom) 107/260 ITR 491(Bom) (2003)

This a landmark decision which is generally applied to treat the event of handing over the possession of land or entering into the date of Joint Development Agreement as the year of transfer of land by the landowner. The court observed that the contract read indicates that at the time of entering JDA, there is transfer of complete control over the property in favor of the developer. Therefore, the date of entering JDA, in the above decision was relevant for recognizing the transfer of land by the landowner. Thus, the essence of Section 2(47) (v) may be considered, when there is transfer of complete control over the asset by the owner to the developer.

Mysore Minerals Limited v. CIT [1999]239/TR775/106.

Hon'ble Supreme Court held that anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded there from and having right to use and occupy the property in his own right would be the owner though a formal deed of title may not have been executed and registered.

CIT v. Dr. T.K. Dayalu [2011]202(Kar.).

It was held by High Court of Karnataka that as the possession of the property was handed over to developer, also some sum was received by the owner, so capital gain should be taxed in the year of entering in to agreement.

Dr. Maya Shenoy v. Asst. CIT [2009] 124TTJ (Hyd.)

The assessee entered into agreement with ASR for construction of flats. According to the agreement the developer was to be

handed over the possession of the said land and in turn had to give 45% of the constructed area to the owner. Therefore, it was held that the handing over the possession was towards the part performance of the agreement and held the effect of transfer as contemplated in section 2(47)(v).

Dr. T. Achyutha v. Asstt CIT [2007]108TTJ (Hyd.)

The assessee entered a Sale cum Development Agreement with the developer on 22-08-1997. An Irrevocable Power of Attorney was also signed thereby passing all rights to dispose of the developed property and to utilize advance and sale consideration. It was decided by the Tribunal that was a transfer of property under Section 53A of the Transfer of Property Act, 1882, which fell within scope of Section 2(47) (v) of the Income Tax Act, 1961.

Basheer Noor Ullah Khan v. CIT ITA No. 575/Bang/2019 31 July, 2019

Conclusion: Though assessee had not become owner of property in question because there was no registered sale deed executed by vendor, however, becoming the owner of the property in question was not required for the purpose of section 54/54F and, therefore, no deduction could be denied to assessee.

Copy of Judgement which is squarely applicable to the case of the assessee is being submitted

Charanjit Singh Atwal v. ITO Ward-VI (1) Ludhiana.

It was held that Irrevocable General Power of Attorney which leads to overall control of property in hands of developer, even if that does not involve exclusive possession of developer, would constitute transfer within the meaning of Section 2(47) (v). It was held that the possession contemplated by provisions of Section 2(47) (v) of the Income tax Act, 1961 does not require handing over exclusive possession. What is required is that the transferred by virtue of possession should be able to exercise from overall intended purposes.

Smt. VasaviPratap Chand v. Dy. CIT [2004]89ITD73 (Delhi):

It was held that, an immovable property can be said to be sold or transferred either when the deed of conveyance is executed as per the general law under the Transfer of Property Act, 1882, or when the possession is transferred in part performance of contract within the meaning of provisions of section 53A of the Transfer of Property Act, 1882 as provided under provisions of Section 2(47) of the Income Tax Act, 1961.

Thus, the property under consideration as per the provisions of Income Tax Act has already been deemed to have been transferred to the assessee as per the provisions Law both under the Income Tax Act as well as Transfer of property Act and the assessee is enjoying the property under consideration as a legal owner. Only for want of "Registration" the assessee cannot be denied the deduction as claimed by him u/s 54 of the Act.

Thus, considering the provisions of Income Tax Act, and conduct of the seller the conclusion of Ld. A.O. that in absence of "Registration" of the property the assessee cannot be allowed deduction u/s 54 of the Act is under wrong interpretation of the definition of transfer. Further, the Ld. A.O. has also mentioned that allotment letter is mere a piece of paper which can at any time be cancelled, the presumption is based on the probability, and not based on any actual action. The Justice cannot be denied on the presumption of any probability but can be denied for actual violation of any law. If based on any probability judgments are passed, then it is very possible that any person can be hanged till death by any "Judge" on the ground of probability of violation of Section 302 of the Indian Penal Code, that a particular person may at any time murder any other person as such on that probability that a particular person has violated provisions of Indian Penal Code and make him liable for punishment.

Thus it is most humbly submitted that in absence of any actual action taken by the appellant for disposing off or cancelling the allotment of the property so purchased by him after discharging

the full consideration of the property merely on the ground that the same is not registered as per the Transfer of Property Act, 1882 and has not paid the legitimate stamp duty on the same, if the intention of Law would be so then in the Income Tax Act no provision would have been prescribed for the "deemed transfer" after fulfilling the above three conditions. Therefore, it is most humbly submitted that necessary directions may kindly be issued to Ld. A.O. to allow the deduction as claimed by him in the return of income.

Regarding Ground No 2 against the additions made by the Ld. A.O. of Rs. 986560 being the indexed cost of house purchased by him in the F.Y. 1994-95 along with the cost of improvement made by him in the F.Y. 2009-10. The Ld. A.O. in Para 4.1 of the assessment order has mentioned that during assessment proceedings the appellant was required to submit the details of cost of improvement made by him as claimed in the return of income. In response to the query of the Ld. A.O. it was submitted that in the F.Y. 2009-10 the assessee incurred a sum of Rs. 115000 for replastering of the house, which was more than 25 years old, the indexed cost of which at Rs. 204707 has been deducted along with the indexed cost of purchase of the said house in the year 1994-95 for a sum of Rs. 180000 the indexed cost of which was worked to be Rs. 781853 as such a sum of Rs. 986560 has been deducted from the sale proceed of the house which comprises indexed cost of purchase price of the house at Rs. 781853 and indexed cost of improvement done by him at Rs. 115000 during the F.Y. 2009-10 for replastering the more than 25 years old house. The Ld. A.O. observed that in the bills of the contractor who has done the replastering observed that in the copy of bill submitted by the appellant of the contractor the plaster work of the house in the year 2009 for which a sum of Rs. 115000 was paid to him in piecemeal on the hand-made bills no mention of the full address and or any phone number was mentioned therefore, in absence of such information the Ld. A.O. drawn a conclusion that the assessee could not establish the identity, genuineness and creditworthiness of transactions. And disallowed the entire indexed cost of the house sold of Rs. 986560 for which no

reason has been mentioned except for the improvement cost of Rs. 115000 as mentioned above. In this regard it is submitted as under:

The appellant in the year 1994-95 had purchased a house for a sum of Rs 180000 through registered sale deed, the copy of which was duly submitted before the Ld. A.O. and now the same is being submitted before your honor also. In the said house the appellant use to reside with his family till 2015, thereafter he constructed new house on another plot. In the year 2009 the appellant done replastering of the said old house in which he was residing as the same was more than 25 years old and incurred a sum of Rs. 115000. The said house has been sold for a sum of Rs. 18750000 through a registered sale deed dated 18.03.2017. The copy of the sale deed was submitted before the Ld. A.O. and being submitted before your honor. Thus, the appellant offered a long-term capital gain of Rs. 3777940. The appellant furnished the computation of working out the longterm capital gain after deducting a sum of Rs. 781853 for indexed cost of purchase price of the House in the year 1994- 95 and further indexed cost of improvement of Rs. 204707 for cost incurred in replastering of the house of Rs. 115000 during the F.Y. 2009-10. The Ld. A.O. doubted the genuineness of the improvement cost for the reason as explained above. Consequently, taxed the long-term capital gain on the entire sale proceed of the house of Rs. 18750000 even without allowing the indexed cost of purchase price of the House. Thus, it is most humbly submitted that necessary directions be issued to the Ld. A.O. to compute the capital gain after allowing all the legitimate deductions as claimed by the appellant in the return of income.

Now, the appellant is submitting the following documents in support of his explanation for deductions claimed while computing the chargeable capital gain tax.

(1) Copy of Computation of Income for the year under consideration.

(2) Copy of Sale deed of the House under consideration.

(3) Copy of Purchase deed of the House which has been sold by him during the year under construction.

(4) Copy of improvement expenses incurred by the appellant during the F.Y. 2009-10

(5) Copy of allotment letter for purchasing new residential property.

(6) Copy of Possession letter for obtaining possession of the property for which exemption u/s 54 of the Act has been claimed while computing the chargeable capital gain.

(7) Copy of Bank Statement in support of the actual payments made for new property purchased by him and for which exemption u/s 54 of the Act has been claimed by the appellant.

(8) Copy of detailed explanation offered in response to show cause Notice dated 30.11.2019

(9) Copy of ITAT Bangalore Bench order in the case of Basheer Noor Ullah Khan v. CIT ITA No. 575/Bang/2019 31 July, 2019 the ratio of which is identical to the case of the appellant."

Thus considering above documents, facts of the case and provisions of Law the deductions as claimed by the appellant while computing long term capital gain be allowed."

4. On the other hand, Ld. DR has submitted that the assessee has claimed only booking of the flats with builders but till date no title deed was executed. Therefore, the claim of the assessee cannot be accepted merely on the basis of the alleged booking when there is no transfer of the residential houses in favour of the assessee. Thus, the conditions provided u/s 54 of the Act for purchase of new house within a period of one year is not satisfied. Even the assessee has not produced any title deed till date which clearly shows that

the claim of the assessee is not genuine. He has relied upon orders of the authorities below.

5. We have perused the submissions of the assessee as raised before the CIT(A) wherein the assessee has claimed that as per the provisions of section 2(47)(v) r.w. section 53A of the Transfer of Property Act the transactions of transfer is completed when the assessee has booked flats against consideration and possession was handed over to the assessee however, in view of the judgment of Hon'ble Supreme Court in case of CIT vs. Balbir Singh Maini 398 ITR 531 the transfer of immovable property without registered agreement is not valid. Further a mere booking of the flat is not sufficient for claiming to the deduction u/s 54 of the Act until and unless title of the property is transferred in favour of the assessee by a registered deed. Despite the lapse of more than 8 years the assessee has not produced any title deed regarding the purchase of new house property. The CIT(A) has considered this issue in para 6 & 6.1 as under:

“6. Ground No.1: In this ground, the appellant has assailed AO's decision of denying deduction u/s 54 of Rs. 1,39,85,500/- on the ground that new residential house is not registered in the name of the assessee.

In the submission filed on 07.12.2023, the appellant has repeated the same arguments as made before the AO. The basis of claim of deduction is copy of allotment letter, copy of bank statement in support of payments made and possession letter issued by the builder. These documents were also submitted before the AO referring to definition of transfer in clause (v) of sub section 2(47) of the IT Act. The appellant has

analyzed the deeming provision of transfer. This requires agreement for sale between the two parties, payment of part consideration and possession to the buyer. As per the appellant, once these conditions are met, an asset shall be deemed to have been transferred. It is therefore submitted that the AO erred in holding that there was no transfer as the property was not registered in appellant's name. The appellant has relied on various case laws:

- 1. Dwarka Das Kapadia v. CIT [2003]/180 CTR (Bom) 107/260 ITR 491 (Bom)*
- 2. Mysore Minerals Limited v. CIT [1999] 239 ITR 775/106.*
- 3. CIT v. Dr. T.K. Dayalu [2011] 202 (Kar).*
- 4. Dr. Maya Shenoy v. Asst.CIT [2009] 124 TTJ (Hyd.).*
- 5. Dr. T. Achyutha v. Asstt. CIT [2007] 108 TTJ (Hyd.).*
- 6. Basheer Noor Ullah Khan v. CIT - ITA No.575/Bang/2019 dated 31.07.2019.*
- 7. Charanjit Singh Atwal v. ITO Ward-VI (1) Ludhiana.*
- 8. Smt. Vasavi Pratap Chand v. Dy. CIT [2004] 89 ITD 73 (Delhi).*

6.1 I have considered the submission of the appellant. As provided in section 2(47), the three conditions for deemed transfer are:

- 1. There is an agreement to sale for purchase/sale of the property between the buyer and seller.*
- 2. Part consideration has been passed to seller from the buyer.*
- 3. Possession of the property under consideration has been passed out to the buyer.*

While the AO has denied the claim on the basis of non existence of registered sale deed, the appellant claims that the allotment

has been done in his name and that is sufficient proof together with payment of consideration and possession of the property. However, I find that for the deeming provision to apply there has to be an agreement for sale for purchase/sale of the property between buyer and seller. However, no such agreement has been produced by the appellant before the AO or thereafter. As per the standard practice in realty sector, an agreement of sale is first made. Most of the time such an agreement is a registered agreement and conveyance is done subsequently on possession. In the case of the appellant, there is no agreement. For this reason various case laws cited by the appellant are not applicable. Therefore the deeming provisions are not applicable. Further it is noted that even in December, 2023, the appellant has not claimed that the property has been registered in his name.

Considering the above, it is held that the property cannot be said to have been transferred in the appellant's name under the provisions of Income Tax Act. Therefore, the deduction u/s 54 is not applicable in the facts and circumstances of the case. The ground no.1 is dismissed.”

5.2 Thus, in absence of any valid title deed transferring legal title in favour of the assessee the claim of the assessee cannot be accepted. We may clarify that even an agreement to sell may be considered as relevant documents of investment for purchase of the residential house for the purpose of claiming deduction u/s 54 of the Act if the said agreement to sell is finally culminated into sale deed or registered title deed. In the case in hand and the assessee has failed to produce any title deed for transfer of the title of the property in favour of the assessee. Accordingly, we do not find any reasons to interfere with the impugned order of the CIT qua this issue.

6. As regards the grievance of the assessee for indexed cost of improvement, the only grievance of the assessee is that the CIT(A) has considered indexed cost of purchase of property and indexed cost of improvement at total amount of Rs.9,86,560/- without segregating the index cost of purchase and improvement. It is pertinent to note that the assessee has raised ground no.2 before the CIT(A) as under:

"2. That Ld. A.O. has erred in not allowing the deduction of indexed cost of purchase of house of Rs. 781853 and cost of improvement of Rs. 11 5000 for which indexed cost comes to Rs. 204 707 as such has denied the deduction of Rs. 98 6560 treating the same as bogus."

6.1 Thus, the assessee claimed on account of indexed cost of purchase and cost of improvement at Rs.9,86,560/- which was allowed by the CIT(A) in para 7 of the impugned order as under:

"7. Ground No.2 is regarding denial of index cost of improvement of Rs. 9,86,560/-

In the assessment order, the AO noted that the copy of bills produced by the assessee issued by one Balchand Plaster Contractor dated 20.07.2009, had a number of deficiencies and the entire payment was made in cash. Therefore, the AO did not find the claim completely genuine. In the submission, the appellant has stated that the property was purchased in 1994-95 and was used for residence till 2015. The re-plastering of old house was done in 2009 and expenditure of Rs. 1,15,000/- was incurred. Copy of the bills issued by the contractor were provided along with submission.

7.1 I have perused the same. The bill clearly provides the name of the contractor and the details of work done. They are signed by the contractor who has endorsed that the payment was

received in cash. Considering the nature of the work and the industry practices, I am of the opinion that the AO should have accepted these proofs. The AO is directed accordingly to give the benefit of cost of improvement to the appellant. Ground No.2 is accordingly allowed.”

6.2 It is clear that ground no.2 of the assessee's appeal was allowed by the CIT(A) and therefore, this ground of appeal before the Tribunal does not emanated from the impugned order of the CIT(A). Accordingly the same is dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 04.09.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 04.09.2024
Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore